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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

GUATEMALA

1. The Committee considered the initial report of Guatemala on articles 1 to 15 of the Covenant (E/1990/5/Add.24) at its 11th to 14th meetings, held on 7 and 8 May 1996, and adopted, at its 26th meeting, held on 17 May 1996, the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation to the State party for the submission of a comprehensive core document and written replies to its list of questions, and for the introductory statement which offered an overview of recent developments and plans in relation to the promotion and protection of the rights provided for in the Covenant.

3. The Committee welcomes the willingness of the high-level delegation to engage in an open and constructive dialogue with the Committee. In this regard, the Committee appreciates the delegation's frank admission that numerous difficulties continue to be encountered and problems remain to be overcome in order to ensure the effective enjoyment of the rights provided for in the Covenant. The readiness of the State party to distribute to the

members of the Committee copies of the Human Rights Procurator's report, which contains material critical of the present situation with regard to the implementation of human rights in the country, is indicative of the openness of the Government in acknowledging and pointing out the present weaknesses and failures of the system for the implementation of human rights standards in Guatemala.

B. Positive aspects

4. The Committee is encouraged by the Government's commitment to the continuity of the process of negotiating a comprehensive peace agreement, as illustrated by the signing in Mexico City on 6 May 1996 of the "Acuerdo Sobre Aspectos Socioeconomicos y Situacion Agraria" which forms part of, and will come into effect with the signing of, the "Acuerdo de Paz Firme Y Duradera".

5. The Committee welcomes the signing on 29 March 1994 of the Comprehensive Agreement on Human Rights and the establishment of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreements on Human Rights in Guatemala (MINUGUA). Further positive developments are the conclusion of the Agreement on Resettlement of the Population Groups uprooted by the Armed Conflict of 23 June 1994, and the Agreement on the Identity and Rights of Indigenous Peoples of 31 March 1995 signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (UNRG). The Government's recent adherence to ILO Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples is also noted with interest.

6. The Committee notes the establishment of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights and the Office of the Human Rights Procurator. It is noted that the latter Office has a unit for the promotion and protection of the rights of persons with disabilities and the elderly and that a bill concerning the care of persons with disabilities is currently being considered.

7. Satisfaction is expressed by the Committee at the ending of the illegal practice of forced enlistment into military service.

8. The Committee takes note of the measures introduced to promote equality between men and women through reform of the Labour Code by Congressional Decree 64-92 of November 1992 and the Constitutional Court's declaration that articles 232 to 235 of the Penal Code are null and void on the grounds that they conflicted with article 4 of the Constitution which states that all human beings are free and equal in dignity, responsibilities and rights.

9. The Committee further notes that the Guatemalan Housing Fund (FOGUAVI) was set up in February 1995 for the principal purpose of providing funding for projects designed to solve the housing problems of Guatemalan families living in poverty or extreme poverty.

C. Factors and difficulties impeding the implementation of the Covenant

10. The Committee recognizes that Guatemala continues to suffer from the consequences of armed conflict which has lasted over 30 years. Overcoming the

resistance to reform from vested interests which have, in the past, caused the failure of agrarian reform, and which continue to be relevant today, is of major importance. Thus, as recognized by the State party, the root causes of the armed conflict remain to be tackled, embedded as they are in socio-economic disparities and uneven land distribution in an almost feudal like system characterized by discrimination against the indigenous and rural populations.

11. The Committee agrees with the observations made by the Government that the situation of armed conflict has resulted in serious human rights violations. The continuing existence of paramilitary groups in the guise of so-called "civilian self-defence committees", which are responsible for many thousands of extrajudicial executions, remains a serious obstacle to peace. The continuing difficulties encountered in combating the problem of impunity and the uneven distribution of economic resources has led to a loss of confidence on the part of the civilian population which needs to be addressed in order to secure economic, social and cultural rights, and a return to the rule of law in the country.

12. The Committee is of the opinion that traditional values and practices assigning an inferior role to women in society and within the family are serious factors impeding the full realization by women of their economic, social and cultural rights as provided for in the Covenant.

D. Principal subjects of concern

13. While the Committee welcomes the Government's intention to reform domestic legislation to bring it into greater conformity with the provisions of international human rights instruments, among them the International Covenant on Economic, Social and Cultural Rights, it remains concerned about the significant gap existing between the rights provided for in legislation and their implementation in practice. It notes with concern the fact that provisions of the Civil Code of Guatemala, especially its articles 109, 114 and 131, discriminate against women.

14. The Committee is extremely concerned at adverse effects that the economic and social disparities existing in the country have on the enjoyment of economic, social and cultural rights by the majority of the population, particularly by the indigenous and rural populations of Guatemala, as well as by other vulnerable groups of society, especially children, persons with disabilities and elderly persons.

15. Far-reaching racial discrimination, extreme poverty and social exclusion in relation to the indigenous populations negatively affect the enjoyment of economic, social and cultural rights by these populations, and are matters of deep concern for the Committee.

16. The Committee wishes to voice its serious concern about the continuing problem of violence against women and the insufficient attention paid to the problem by governmental institutions which has led to the invisibility of the problem of domestic violence against women.

17. While the Committee appreciates the open admission of the Government that land was illegally appropriated by force in the past and that plans are in place to address this problem, the Committee remains convinced that the issue of land ownership and distribution of land is crucial to addressing economic, social and cultural grievances of a substantial segment of the population.

18. The Committee is deeply disturbed at the apparent flagrant disregard of labour laws, the alarming reports of employer impunity, the lack of respect for minimum wages, for conditions of work and unionization, particularly as they affect individuals employed in a large number of the farming sectors. The ineffectiveness of labour laws in protecting trade unions rights when coupled with the problems of high levels of unemployment and underemployment give cause for deep concern. Thus, despite the Government's stated policy of undertaking further commitments to strengthen the labour inspectorate and introduce changes in the monitoring and enforcement of labour standards, including through the proposals on economic policy and labour legislation contained in recently signed agreements, the possibilities for ensuring effective implementation of the new proposals continue to give grounds for concern to the Committee. One aspect which is of serious concern to the Committee is the situation of those persons working in the "maquillas" (expert sector industries), many of whom are women.

19. The Committee remains unclear at to the adequacy of social protection provided to those employed in the informal sector.

20. The general situation faced by internally and externally displaced persons remains a serious cause of concern for the Committee.

21. The Committee expresses its concern about the issue of low access to safe water for the rural population, the higher incidence of infant mortality within certain socio-economic groups, the situation of persons with disabilities, the prevalence of endemic diseases, the problem of the inadequacy of social welfare and security, the persisting housing shortage and the inadequacy of access to health care. The Committee is of the view that this general situation, affecting the most vulnerable in Guatemalan society, deprives them of their full enjoyment of the economic, social and cultural rights provided for in the Covenant.

22. Particular concern is expressed by the Committee at the persisting problems of illiteracy and lack of access to education as they affect the poorest sectors of the population. Notice is also taken by the Committee of the inadequacy of human rights education provided for the entire population.

E. Suggestions and recommendations

23. The Committee acknowledges the good will of the Government and its open admission of the need for reform in all areas of social, economic and cultural life. The Committee stresses that the implementation of the Covenant's provisions can not be ensured without reform and adequate implementation of the peace accord, which require above all the just distribution of wealth and of land.

24. Thus the Committee is of the opinion that the issue of land ownership and redistribution should be closely monitored, both in the light of the implementation of article 14 of the Political Constitution of the Republic of Guatemala, which provides for the expropriation of fallow land on private estates, and the implementation of the "Acuerdo Sobre Aspectos Socioeconomicos y Situacion Agraria". The establishment of national benchmarks is essential to ensure a systematic review of the progress made towards their implementation and should be viewed as an essential element for ensuring international cooperation and domestic change. The Committee recommends therefore that international cooperation must be devoted to the goal of implementation of economic, social and cultural rights.

25. The Committee notes the intention of the Government to reform its fiscal and monetary policy as a means of promoting social and economic development. The Government's plans to divert resources to social welfare measures, particularly in the fields of health and education, are welcomed. The Committee recommends that the international community support the measures taken in this regard and ensure the regular and close monitoring and reviewing of projects undertaken pursuant to various agreements entered into with a view to securing a lasting peace.

26. The Committee emphasizes the importance of the role being undertaken by MINUGUA in monitoring the peace process and the progress of efforts to improve respect for human rights, which should include economic, social and cultural rights.

27. The Committee recommends that all legislative and other reforms should take into account the need to promote equality and reverse the devastating effects of discrimination against the indigenous populations, in particular through affirmative action.

28. It is the Committee's view that the problem of discrimination against women has been neglected and that this lacuna should be addressed, especially in view of the present efforts to effect changes in attitudes and policy for sustainable peace and development in the country. The Committee notes with approval the proposed consideration of reform of family law in the Civil Code, namely its articles 109, 131 and 114, which discriminate against women.

29. It is urgently recommended that the effective implementation of trade-union rights and the labour laws be addressed. The protection of such rights requires that particular attention be accorded to the enforcement of labour laws, consistent with the provisions of the Covenant, especially in view of the considerable needs of the indigenous and other disadvantaged groups of society to enjoy economic opportunities and social mobility.

30. While taking note of the various measures taken to reintegrate returning refugees and internally displaced persons, the Committee wishes to highlight the need for continued international cooperation in this field too. Moreover, the careful scrutiny and involvement of the international community in all these efforts will be all the more indispensable in the event of the peace agreement being signed and of the consequent necessity for the reintegration of the demobilized army and guerilla forces into society and the economy.

31. The Committee recommends that further measures be taken to prevent and combat the phenomenon of child labour, including through full respect for the international standards relating to the minimum age of employment of children.

32. The Committee acknowledges the value of the shift in health and education policy towards promoting access to health care and services and to education for the most disadvantaged groups of society and strongly recommends that this focus be maintained. It reiterates its strong conviction of the need to devote sufficient resources to the implementation of articles 9 to 14 of the Covenant. In this context, attention is also drawn to the urgent need to undertake further measures to tackle the problem of illiteracy.

33. The Committee concurs with the observations made by the delegation that a major task facing the country and its Government is to further develop, strengthen and secure the participation of the population in establishing and preserving lasting peace in the country through implementation of decisions agreed upon in peace agreements regarding the full respect of human rights and fundamental freedoms. It is the Committee's opinion that a human rights culture must be created, including addressing the problem of culturally ingrained discrimination, which is pervasive in Guatemala.